

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5047 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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HEIRS OF BABULAL MOHANLAL PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR SB PANDIT for Petitioners

MR RM Chauhan, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 23/02/98

ORAL JUDGEMENT

1. The petitioner is a manufacturer of Kakab from  
molasses and he is holding M-II licence under Rule 4 of  
Bombay Molasses Rules, 1955 framed under the Bombay  
Prohibition Act, 1949. One of the conditions in the

licence was that he shall not use more than 10 M.T. of molasses in any calendar month. He was entitled to have possession upto 60 M.T. of molasses at any one time.

2. It is alleged that in the month of December 1979, the petitioner committed a breach of this condition of not using more than 10 M.T. of molasses and he actually used 22 M.T. of molasses in the month of December 1979.

3. On account of the breach of this condition, the licence came to be cancelled by the Superintendent of Prohibition and Excise by his order dated 2nd June 1982. The appeal to the Director of Prohibition and Excise, came to be dismissed by order dated 5th November 1982. The revision application to the State Government also came to be dismissed on 30th November 1983.

4. In this petition, it is contended that for the breach of condition no.2, in one month, the punishment of cancellation of licence for all time is too excessive. It is also submitted that even after detection of this lapse on 30th December 1979, the licence has been renewed every year and it has been continued even during the pendency of this petition. It is submitted that there is no serious lapse which would necessitate the extreme step of cancellation of licence for all time to come.

5. Having regard to the nature of lapse, it appears that the extreme step of cancellation of licence is wholly disproportionate to this breach and hence it is required to be quashed and set aside. However, the fact that there is a breach of condition of licence is not disputed. The petitioner was found to have used molasses in excess of the condition of licence and, therefore, the proportionate and commensurate with that lapse, the appropriate punishment of fine or composition fee is required to be imposed. It is stated by the learned Counsel for the petitioner that the price of 1 M.T. of Kakab is Rs. 320/-.

6. In above view of the matter, it is directed that the petitioner shall pay a sum of Rs. 4000/- (Rs. Four thousand only) to the respondent authority. Under section 104 of the Bombay Prohibition Act, the compounding of the breach is provided. This power ought to have been exercised by the authority; and in lieu of the cancellation of licence, the authority ought to have ordered payment of value thereof.

7. In view of the aforesaid provision, the petitioner is directed to pay a sum of Rs. 4000/- (

Rs.Four thousand only) to the respondent authority and the order of cancellation of licence is quashed and set aside. The petitioner to pay the sum of Rs. 4000/- within one month from today.

Rule is made absolute accordingly.

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mhs/-